

**RECORD NOS. 12-15705(L);
12-15889; 12-15957; 12-15996; 12-16010; 12-16038**

**In The
United States Court of Appeals
For The Ninth Circuit**

In re: ONLINE DVD RENTAL ANTITRUST LITIGATION,

**ANDREA RESNICK; BRYAN EASTMAN;
AMY LATHAM; MELANIE MISCIOSCIA;
STAN MAGEE; MICHAEL OROZCO;
LISA SIVEK; MICHAEL WIENER,,**
Plaintiffs-Appellees,

v.

THEODORE H. FRANK,
Objector-Appellant,

v.

**NETFLIX, INC.; WAL-MART STORES, INC.;;
WALMART.COM USA LLC,**
Defendants-Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, OAKLAND**

**Objectors-Appellants Theodore H. Frank (12-15705(L)),
Tracey Klinge Cox (12-16038), John Sullivan (12-16010), Maria Cope (12-15996), and
Edmund F. Bandas' (12-15957) Excerpts of Record
Volume 1 of 3
(Pages 1-31)**

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(Case No. 12-15705)***

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**RECORD NOS. 12-15705(L);
12-15889; 12-15957; 12-15996; 12-16010; 12-16038**

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE ONLINE DVD RENTAL ANTITRUST LITIGATION	Master File No. 4:09-md-2029 PJH MDL No. 2029 Hon. Phyllis J. Hamilton
This document relates to the following actions: <i>Resnick et al v. Walmart.com USA LLC</i> , 4:09-cv-00002-PJH <i>Lynch et al v. Walmart.com USA LLC</i> , 4:09-cv-00138-PJH <i>Sivek v. Walmart.com USA LLC</i> , 4:09-cv-00156-PJH <i>Orozco v. Netflix, Inc.</i> , 4:09-cv-00297-PJH <i>Miscioscia v. Netflix, Inc.</i> , 4:09-cv-00377-PJH <i>Weiner v. Walmart.com USA LLC</i> , 4:09-cv-00398-PJH <i>Magee v. Netflix Inc.</i> , 4:09-cv-01793-PJH <i>Caldwell v. Netflix, Inc.</i> , 4:11-cv-01928-PJH <i>Barnett v. Netflix, Inc.</i> , 4:11-cv-04328-PJH	[PROPOSED] ORDER AND FINAL JUDGMENT APPROVING SETTLEMENT BETWEEN SETTLEMENT CLASS PLAINTIFFS AND WAL-MART STORES, INC. AND WALMART.COM USA LLC

[PROPOSED] ORDER AND FINAL JUDGMENT; Master File No. 4:09-md-2029 PJH

1 This matter came before the Honorable Phyllis J. Hamilton on Plaintiffs' Motion for Final
2 Approval of Settlement ("Final Approval Motion").

3 WHEREAS, a consolidated class litigation is pending before the Court entitled *In re: Online*
4 *DVD Rental Antitrust Litigation*, Master File No. 4:09-md-2029 PJH, MDL No. 2029 (United States
5 District Court for the Northern District of California);

6 WHEREAS, the Court has received and reviewed the Settlement Agreement entered into
7 between the Named Plaintiffs, the Settlement Class Representatives, and the Settlement Class
8 Members on the one hand, and Defendants Wal-Mart Stores, Inc. and Walmart.com, USA LLC
9 (collectively, "Wal-Mart") on the other hand, dated July 1, 2011 (the "Agreement"), and has
10 considered the terms of the proposed settlement set forth therein (the "Settlement");

11 WHEREAS, all terms used herein shall have the same meanings as set forth in the Agreement,
12 unless otherwise defined herein;

13 WHEREAS, on September 2, 2011, the Court entered its order preliminarily approving the
14 Settlement of this class action as between the Named Plaintiffs, the Settlement Class Representatives
15 and the Settlement Class Members, on the one hand, and Wal-Mart, on the other hand, and setting a
16 date and time for a fairness hearing to consider whether the Settlement should be finally approved by
17 the Court pursuant to Rule 23(d) of the Federal Rules of Civil Procedure as fair, adequate, and
18 reasonable (the "Preliminary Approval Order");

19 WHEREAS, the Court later directed that all Settlement Class Members be given notice of the
20 Settlement, and approved the form and method of notice, and of the date for the final fairness hearing;

21 WHEREAS, the Court has received declarations of Tore Hodne, Shannon Wheatman, Ph.D.,
22 and Steve McLendon attesting to the e-mailing and publication of the Notice in substantial accordance
23 with the Preliminary Approval Order;

24 WHEREAS, the Court entered a Conditional Class Certification Order on September 2, 2011,
25 which reflects the claims certified for Settlement purposes and the scope of the Settlement Class;

26 WHEREAS, the Court having considered all timely filed objections to the Settlement; and

27 WHEREAS, the Court having conducted a final fairness hearing on March 14, 2012 (the
28

1 “Settlement Approval Hearing”), and having considered the arguments presented, all papers filed, and
2 all proceedings had therein;

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

4 1. The Court has jurisdiction over the subject matter of this action, all Settlement Class
5 Members, and all Defendants.

6 2. In accordance with Rule 23(d) of the Federal Rules of Civil Procedure and the
7 requirements of due process, all members of the Settlement Class have been given proper and adequate
8 notice of the Settlement. Based upon the evidence submitted by the parties to the Agreement, the
9 Agreement, the arguments of counsel, and all the files, records, and proceedings in this case, the Court
10 finds that the Notice and notice methodology implemented pursuant to the Agreement and the Court’s
11 Preliminary Approval Order (a) constituted the best practicable notice under the circumstances; (b)
12 constituted notice that was reasonably calculated, under the circumstances, to apprise members of the
13 Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right
14 to appear at the Settlement Approval Hearing; (c) were reasonable and constituted due, adequate, and
15 sufficient notice to all persons entitled to notice; and (d) met all applicable requirements of the Federal
16 Rules of Civil Procedure, and any other applicable law.

17 3. The Agreement in this action warrants final approval pursuant to Rule 23(e) of the
18 Federal Rules of Civil Procedure because it is fair, adequate, and reasonable to those it affects; it
19 resulted from vigorously contested litigation, discovery and motion practice and extensive good-faith
20 arm’s length negotiations between the parties; and it is in the public interest. In making this
21 determination, the Court has considered and balanced several factors, including the following factors
22 identified by the Ninth Circuit Court of Appeals:

23 (a) the strength of the plaintiffs’ case;

24 (b) the risk, expense, complexity, and likely duration of further litigation;

25 (c) the risk of not attaining certification of a litigation class, as well as the risk of
26 maintaining class action status throughout the course of the litigation;

27 (d) the amount offered in settlement;

28 (e) the extent of discovery completed, and the stage of the proceedings;

(f) the experience and views of counsel; and

(g) the reaction of the class members to the proposed settlement.

See Torrissi v. Tucson Elec. Power Co., 8 F.3d 1370, 1375 (9th Cir. 1993). Settlements that follow sufficient discovery and genuine arms-length negotiation are presumed fair. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

4. The Final Approval Motion is hereby GRANTED, and the Agreement is hereby APPROVED as fair, reasonable, adequate, and in the public interest, and the terms of the Agreement are hereby determined to be fair, reasonable, adequate, and for the exclusive benefit of the Settlement Class Members. The Parties to the Agreement are directed to consummate the Agreement in accordance with its terms.

5. The Court FINDS that the following Settlement Class, conditionally certified on September 2, 2011, meets the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3) and such certification is hereby made final:

Any person or entity residing in the United States or Puerto Rico that paid a subscription fee to rent DVDs online from Netflix on or after May 19, 2005, up to and including September 2, 2011.

6. The Court APPROVES payment of the Class Settlement Amount in accordance with the terms of the Agreement.

7. The Court APPROVES payment of Class Representative Incentive Payments to Bryan Eastman, Amy Latham, Melanie Misciosia Salvi, Stan Magee, Michael Orozco, Andrea Resnick, Lisa Sivek, Michael Weiner, and Scott Caldwell in the amount of \$5,000.00 each.

8. The Court APPROVES payment of Attorneys' Fees of \$ 6,812,500.00 and Costs to Class Counsel in the amount of \$ 1,700,000.00 in accordance with the terms of the Agreement.

9. The allocation plan is hereby APPROVED as fair, adequate, and reasonable. The Class Settlement Amount shall be distributed in accordance with the terms of the Agreement. Monies transferred to the QSF for purposes of paying the Attorneys' Fees and Costs awarded in Paragraph 7, shall be distributed to Class Counsel. Once Wal-Mart pays such monies into the QSF, Wal-Mart shall

1 have no further liability as to the allocation of such funds. The Court further finds that no attorneys
2 have asserted any attorney liens as to the attorneys' fees and costs awarded by the Court.

3 10. The Litigation as between the Named Plaintiffs, the Settlement Class Representatives,
4 and the Settlement Class Members on the one hand, and Wal-Mart on the other hand, is DISMISSED
5 WITH PREJUDICE and without costs to any Party, other than as specified in the Agreement and this
6 Order.

7 11. In consideration of the Class Settlement Amount, and for other good and valuable
8 consideration, each of the Releasing Settlement Class Members shall, by operation of this Judgment,
9 have fully, finally, and forever released, relinquished, and discharged all Settlement Class Member
10 Released Claims against Wal-Mart in accordance with Section 15.1 of the Agreement, the terms of
11 which section are incorporated herein by reference; shall have covenanted not to sue Wal-Mart with
12 respect to all such Settlement Class Member Released Claims; and shall be permanently barred and
13 enjoined from instituting, commencing, prosecuting, or asserting any such Settlement Class Member
14 Released Claim against Wal-Mart.

15 12. For good and valuable consideration, Wal-Mart shall, by operation of this Judgment,
16 have fully, finally, and forever released, relinquished, and discharged all Wal-Mart Released Claims
17 against the Releasing Class Members in accordance with Section 15.2 of the Settlement Agreement,
18 the terms of which section are incorporated herein by reference; shall have covenanted not to sue
19 Releasing Class Members with respect to all such Wal-Mart Released Claims; and shall be
20 permanently barred and enjoined from instituting, commencing, prosecuting, or asserting any such
21 Wal-Mart Released Claims against Releasing Class Members.

22 13. This Judgment is the Final Judgment in the suit as to all Settlement Class Member
23 Released Claims.

24 14. Those persons or entities eligible for membership in the Settlement Class who timely
25 submitted valid requests for exclusion are not bound by this Judgment, and are not entitled to any
26 recovery from the settlement proceeds obtained through the Settlement. Those persons or entities are
27 listed in Exhibit A to this Order.

28

1 15. Without affecting the finality of this Judgment in any way, this Court retains
2 jurisdiction over (a) implementation of the Settlement and the terms of the Agreement; (b) distribution
3 of the Class Settlement Amount, the Class Representative Incentive Payments, the Attorneys' Fees and
4 Costs Amount; and (c) all other proceedings related to the implementation, interpretation,
5 administration, consummation, and enforcement of the terms of the Agreement and the Settlement, and
6 the administration of Claims submitted by Settlement Class Members. The time to appeal from this
7 Judgment shall commence upon its entry.

8 16. In the event that the Settlement Effective Date does not occur, this Judgment shall be
9 rendered null and void and shall be vacated, nunc pro tunc, except insofar as expressly provided to the
10 contrary in the Agreement, and without prejudice to the status quo ante rights of Plaintiffs, Settlement
11 Class Members, and Wal-Mart.


12 17. This Court finds that there is no just reason for delay and expressly directs Judgment
13 and immediate entry by the Clerk of the Court.

14 **IT IS SO ORDERED.**

15 Dated: 3/29/12

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Honorable Judge Phyllis J. Hamilton
United States District Court Judge



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EXHIBIT A

Class Members Requesting Exclusion

AARON TALLMAN	ANDREW KOCH	BARBARA BULLOCK
ABBY DOHNER	ANGEL MUNGUIA	BARBARA J RANANDO
ADAM KETCHER	ANGELA BECK	BARBARA J SPECK
ADRIAN FRANKS	ANGELA FOPPIANO	BARBARA M TOBIN
ADRIAN HERBEK	ANITA FRAZIER	BARTON MARKS
AIMEE CALDWELL	ANITA GIBSON	BARTON QUILLEN
AIMEE LEOPOLD	ANN and WICK GUBLER	BENJAMIN CAUDILL
AJITHA DE SILVA	ANN ELWELL	BENJAMIN ELMORE
ALAN HORTON	ANNA DE VERA	BENJAMIN LOWRY
ALBERT FEINSTEIN	ANNA GEHRIGER	BERNARD J PUROL
ALEJANDRA ORTEGA	ANNA MARIE MOLLOY	BERNARD MEIN
ALESSANDRA BUSCHMAN	ANNE BUTZEN	BERNICE BOLEK
ALEXANDER UTTER	ANNE LEGARE	BETH BOWER
ALICE SCHWEGMAN	ANNE M DELVILLANO	BETH SCHWARTZ
ALLEGRA HARRINGTON	ANNIE GREEN	BETHANY KULP
ALLISON FELL	ANTHONY CASOLA	BETHANY WATTS
ALYONE RILEY	ANTONELLA ABRUDI	BETTY L SLIDER
AMANDA AND MICHAEL BASS	ANTONETTE CICCARELLI	BHARAT BHATIA
AMANDA BERG NORTON	ANUJ PARIKH	BILL COOPER
AMY KIRK	ARIADNE MONTARE	BILL DAVIS
AMY SAMUEL	AUDRA JONES	BILL HALTON
ANDERS GILCHRIST	AVERY LAWRENCE	BILL STURBAUM
ANDREA DOERING	AVIS BRICE	BOB and STEPHANIE BAKER
ANDREA FROME	B.D. GRIBBEN	BOB BONSKOWSKI
ANDREW CORRIGAN	BARBARA A BRADLEY	BOB GREEN

Exhibit B

Class Members Requesting Exclusion

BOBBIE MISHLER	CATHERINE CAUDLE	CHRISTOPHER DISBROW
BOBBY POWELL	CATHERINE HOWELL	CHUCK BRANDON
BONITA COFFIN	CATHERINE SULLIVAN	CINDRA OTTO
BONITA TORPE	CATHIE RUTKIN	CINDY JENNINGS
BRADLEY BROCK	CECIL DAVIS	CINDY PASKE
BRETA ALTER	CECILIA JOHNSON	CINDY SMITH
BRIAN SCOTT	CHARLES CASTLE	CLAIRE NUSSBAUM
BRIDGET DALY	CHARLES DEBOW	CLARA YOS
BRIDGET GERLACKI	CHARLES DUKE	CLASINA VAN VELZEN-STUP
BRIDGETTE BROWN	CHARLES REINHEIMER	CLAUDIO ALVES DE LIMA
BRYCE R LENSING	CHARLES SAYLOR	CONSTANCE KILGORE
C FARRINGTON	CHARLES VENEZIA	CONSTANCE PARSONS
C NICHOLAS AND JEAN M FERLAZZO	CHARLOTTE PAULY	CORBIN NAEKEL
CALLEY SCOTT	CHEVONNE MALONE	CRAIG HARPER
CALLIE C HAWKINS	CHOL SONG	CRUZ M GOBEA
CAMERON MCGOWAN CURRIE	CHRIS BIHLER	CRYSTAL WILKIE
CARA STUKES	CHRISTA L GRENIER	CURTIS HALL
CAREN WITMER	CHRISTE MCMENOMY	CYNTHIA COATS
CARLA J PATAT	CHRISTINA BOAVAIRD	DANETTE MORRIS
CARLO MONTICELLI	CHRISTINE LINDEWALD	DANIEL BODDICKER
CAROL C WESLEY	CHRISTINE MADONNA	DANIEL BRAZ
CAROL LETSON	CHRISTINE RENAUDIN	DANIEL KENYON
CAROL WOODS	CHRISTINE RYALS	DANIEL MANNING
CARROLL LISLE	CHRISTINE SOLTIS	DANIELLE RORICK
	CHRISTOPHER ALAN PENNY	DARIUSZ JURA

Exhibit B

Class Members Requesting Exclusion

DARLENE GARBE	DIEM NGUYEN	ELAINE WEMPEN
DARREN SIMPSON	DIONESIA DIMITRIOU	ELEANOR CHIN
DAVID C DELMER	DOLORES PEPE	ELENA DAVIS
DAVID SIMPSON	DON AND KAREN NICHOLS	ELIDA D WILSON
DAVID SPURGEON	DONALD L HIBSCHWEILER	ELIZABETH DAVIS
DAVID THOMPSON	DONNA and LAWRENCE LEGGETT	ELIZABETH HANSEN
DAVID VILGOS		ELIZABETH MACKENZIE
DAVID WAKEFIELD	DONNA CANJA	ELIZABETH S WEBBINK
DAVID WEST	DONNA DYER	ELIZABETH VERMILLION
DAWN MARSHALL	DONNA FERGUSON	ELIZABETH ZANCA
DAYNA STUECK	DONNA LO SCHIAVO	EMILY LANGE
DEBBIE EASLEY	DONNA MENDONCA	ERIC M ARMSTRONG
DEBBIE HASKELL	DONNA SCHWERIN	ERIC SHOREY
DEBBIE SPINKS	DORE KESTERSON	ERIN BOOTLE
DEBBIE TERRY	DOREEN GALLAGHER	ERIN JAEGER
DEBORAH ZACHA	DORI E KRUGER	ERIN SUTYLA
DEE DEE BABICH	DORIS VIRDEN	EUGENE P SCHWENK
DELORES POWERS	DOUGLAS FLORES	EUNICE CHUNG
DENISE MIRA	DR ALAN O PERANTONI	FERN GARDNER
DENISE MUNOZ	DT SHANTHA	FLAVIL GEORGE
DENNIS BEAUJEAN	E.J. HEALEY JR	FORRES MEADOWS
DENNIS E HAMILTON	EDWARD AND SHARON SHEPPARD	FRAN GIGLER
DIANE GRADY	EILEEN ERVING	FRAN HAWKINS
DIANE GRANBERY	EILEEN WALTON	FREDERICK MACASKILL
DIANNA LITTLE	ELAINE M MOORE	GAIL WEGNER

Exhibit B

Class Members Requesting Exclusion

GARLAND DAVIS	GUILERMO A SANCHEZ	JAMES REAGAN
GARY BLOMQUIST	GUILLERMO SANCHEZ	JAMES THOMPSON
GARY BUDDLELL	HALEE MANNING	JAN MAIER
GARY NARHRWOLD	HALEY KINDREX	JANE JOHNSON
GAY HOLMES	HAROLD HOROWITZ	JANE PITTMAN-HAWKINS
GENA HYMOWECH	HEATHER KING	JANE W ARRINGTON
GENE ARNOLD	HEIDI BROWARD	JANET DENISI
GENE V ELLIS	HELEN ALEXANDER	JANET GAINES
GENIEVE MAESTAS	HELEN DEWEY	JANET MARTIN
GEORGE CANNING	HENRY BOESCH	JANICE RATHGEB
GEORGE L GRIGGS	HENRY C KLA PUT	JASON CURTIS
GERALD GALLIMORE	HILARY NEGELE	JASON PERKINS
GINA C ESCARPANTER	HILLARY and EDWARD PROKOP	JASON TOMFORDE
GISELLE GLEASON	HUGH KEITH-JOHNSTON	JAY LINDSAY
GITI UNDERHILL	IRENE ROUTSON	JAY NOLTE
GIULIO BRUNI	IRWIN STOLOWITZ	JAY WILLIAM MCDANIEL
GLORIA BUCHANAN	JACK AND CORINNE MCCLARAN	JAYCEN WOODS
GLORIA SCHWEITZ	JACOB TIMM	JEAN KESSLING
GORDON SPENCER	JACQUELINE KURAJ	JEAN M LANGLEY
GREG AND KAREN CHALMERS	JAIME SEGURA	JEANNA WILLIAMS
GREG HALL	JAMES AND BARBARA LEWIS	JEANNE M VAN EEOEL
GREGORY AND MICHEL JACKSON	JAMES DOHERTY	JEFF AND PAMELA NORTHROP
GREGORY BELILES	JAMES F KAMPHAUS	JEFF BOHN
GREGORY MCDANIEL	JAMES P CUTONE	JEFF SUTHERLAND
		JEFFREY MORIN

Exhibit B

Class Members Requesting Exclusion

JEFFREY WHITE	JOEL AND MELINDA OESTER	JOSEPH J COMINCIOLI
JENA MORKEN	JOEL MILLER	JOSEPH M PROCACCINI
JENNIFER CHASE	JOHANNA FENICLE	JOSEPH YORK
JENNIFER MCCLARREN	JOHN AND EVELYN LA FOND	JOSH TAPANI
JENNIFER MURRAY	JOHN and GAYLEE FIEL	JOSH WHITTENBERG
JENNIFER RUNION	JOHN BOLAN	JOSHUA MARZAN
JENNIFER SWISHER	JOHN CHENEVEY	JOSHUA MISHLER
JENNIFER VANDERSCHANS	JOHN DARDEN	JOY COFFEY
JEREMIAH COLEMAN	JOHN GORMAN	JOYCELYN LANGEVIN
JERI MARKHAM	JOHN K EGGENBERGER	JUANITA WASSMANN
JERRI RUDNICK	JOHN MARQUIS	JUDITH PERLOW
JESSICA DENEEN ONORATO	JOHN MIXON	JUDY CABLE ANDERSON
JESSICA ELWELL	JOHN PURTYMUN	JUDY PANCAKE
JESSICA MARTINEZ	JOHN R GUARINO	JUDY VAN BLARCOM
JESSICA MELORO	JOHN R SUBERT	JULIA ANDERSON
JIM ROHR	JOHN RAGLAND	JULIA E LITTLE
JOAN A WALKER	JOHN SAMSON	JULIA HARRISON
JOANN and MICHAEL PETOSA	JOHN W MORGAN	JULIE EAKLOR
JOANN ROBISON	JOHN WISSENBACH	JULIE GILL
JOANNE B GLOTZBACH	JON HAGAR	JULIE RITCHISON
JOANNE CRAIG	JONATHAN REAGAN	JULIE TRIPP
JODI AND DENNIS WILLIAMS	JORGE MENDOZA	JULIO TEJADA
JODIE SCREES	JOSEPH CARRERA	JULLIENNE FERRER
JOE AND LORIE PEADEN	JOSEPH E HASTINGS	JUSTIN AND DANA BURIE
JOE WOLFORD	JOSEPH GREENWOOD	JUSTINE YALEY

Exhibit B

Class Members Requesting Exclusion

KAREN BELSKY	KEVIN RYAN	LEAH CHRUANA
KAREN BERG	KEVIN WONG	LEE BAKER
KAREN MORGANTE	KIM SABELLA	LEE DUNCAN
KARI HYMAS	KIM SCHWADERER	LEE JOHNSON
KASEY HARGAN	KIM WEST	LEN AND CONI BILLINGS
KATE WALSH	KIMBERLEY SCHONECK	LENOR EICHER
KATHERINE LYNN	KIMBERLY OMELSON	LENORA MITCHELL
KATHLEEN BRANDON	KIMBERLY SCHEPER	LESELYN GREENWALD
KATHLEEN N SKEERS	KJELL GUNDERSEN	LESLIE ROSE
KATHLEEN SIESS	KRISTA B POPE	LESTER SLIFKIN
KATHRYN MARTIN	KRISTI JONES	LINDA BUELL
KATHY JO HAWKINS	KRISTIN BROOKE BENTON	LINDA CLARK
KATIE SMITH	KRISTIN HERSHEY	LINDA FERGUSON-DAVIE
KAY DOSTAL	KRISTINA COOPER	LINDA KEIM
KEITH AND KARLA ROUNSAVILLE	KURT SERMAS	LINDA KELLEY
KEITH B BURRISS	LACHELLE M CURTIS	LINDA MCDONNELL
KEITH CHAMBERS	LARRY JAQUES	LINDSEY GOODMAN
KELLIE L ALTMAN	LATHER W POWELL SR	LISA MEYER
KELLY KOENIGS	LAURA BROOKS	LOULAN PITRE JR
KENNETH BASSETT	LAURA STOTT	LUCILA NIGRO-WING
KENNETH HUFF	LAUREN OWSLEY	LUCILLE GROSSI
KENNETH LINEMAN	LAUREN SCOTT	LYNAE ENGLAND
KENT VAN EVERY	LAUREN SHUTE	LYNN ESTER
KERMON CARTER	LAURIE GETER	LYNN KLINE
KEVIN PODKOWKA	LAVINA JOHNSON	LYNNE BROUGHER

Exhibit B

Class Members Requesting Exclusion

MACKENZIE ROCHA	MARLENE HALACKA	MELODY and JAMES GREGG PARSONS
MADELYNE BARNETT	MARLENE HARESIGN	
MAGDA COLBERG	MARNEY LIEBERMAN	MELONY KAWAMURA
MALKE ROTH	MARVITA GRIMES	MERCEDES RUIZ
MALLORY BOEYINK	MARY AND ROBERT HEISSERMAN	MEREDITH STROBLE
MANDY CUNNINGHAM		MICHAEL BARRESE
MANUEL SERRATOS	MARY ANGIN	MICHAEL AND MANDY MELICK
MARGARET HARDY-MITCHELL	MARY ANN METCALF	
	MARY AYERS	MICHAEL FINK
MARGARET HOERST	MARY DRAEGER	MICHAEL GARRISON
MARGARET ROBERTS	MARY ELKINS	MICHAEL J BROCK
MARGE STANDING	MARY GILLETTE	MICHAEL LIM
MARIAM SHAMI	MARY KAY JOENS	MICHAEL LINEBACH
MARIAN WILKES	MARY S ASHMAN	MICHAEL SMUDA
MARIANNE WEIDLEIN	MARY STYFFE	MICHELE AND JAMIE PREDER
MARIE SAMUEL	MARY TIPTON	MICHELE JUDGE
MARILYN A ZANDER	MARY YOUNG	MICHELLE ANN HOSTMEYER
MARION BOLIN	MATT BROWN	MICHELLE BOOTH
MARISA MADRID	MATT SNYDER	MILLICENT RUMMEL
MARISSA and ROBERT RADOVAN	MATTHEW NICKEL	MIRIAM MEYERS
	MATTIE DAVIS	MITRA RAHNEMA
MARK BURKE	MAUREEN BROOK	MONICA R GREY
MARK D HENDERSON	MEGAN HOCHSTEDLER	MONICA WERNER
MARK H GERTH	MELISSA J COOK	MORGAN GOKEY
MARK SQUIRES	MELISSA MURZ	MUNIR KADERBHAI
MARLENE GRIFFIN	MELISSA TODD	MYRNA J STANER

Exhibit B

Class Members Requesting Exclusion

MYRTLE KILION	NORMA LEBARON	PETER TRINKLE
NANCY B STEWART	NOZAR MOZAKA	PETER ZUG
NANCY CHRISTIE	PALLAVI BANDODKAR	PHIL PETERSON
NANCY CLARK	PAM AND BILL BUCKLEY	PHILIP NELSON
NANCY DZUROSKA	PAMELA KESTER	PHYLLIS SYLVESTER
NANCY E ANKLAM	PAT ALLEN	PILAR ORLANDI
NANCY E MILLER	PAT HEUER	RALPH L HERGENRADER
NANCY HOLT	PAT WALLACE	RAMONA M SOULE
NANCY LAWRENCE	PATRICE MALLERY	RAULIE W CASTEEL
NANCY MONTANA	PATRICIA A WALLACE	RAY and GRACE STANCZAK
NANCY S BARBER	PATRICIA ALLEN	RAYMOND and MARJORIE SULLIVAN
NANCY ST GERMAIN	PATRICIA COTTER	REBECCA BENAROYA
NATALIA TAN	PATRICIA H TODD	REBECCA MEIERS
NATHAN KENNEDY	PATRICIA KELLY	REGINA SEUS
NATHAN SCHULTZ	PATRICIA MEEKS	REGINE BAUS
NATHANIEL PAINE	PATRICIA SWINTON	RESIDENT
NELIDA RIVAS	PAUL AND ARLYS SLAUGHTER	RICHARD DARLING
NELSON DEGRACIA	PAUL AND NOREEN BETTEN	RICHARD E TYNER
NIALl DURHAM	PAUL CROSSMAN	RICHARD GOSS
NICHOLAS BARNARD	PAUL E BARKER	RICHARD PRICE
NICK SWATEK	PAUL R PARK	RICHARD R DENSON
NICKIE COOK	PAUL REECE	ROB COATSWORTH
NIMA BAGHAEI	PAULA A BUREAN	ROBERT AND MARIANNE GREEN
NON FINKELSTEIN	PAULA STOKES	ROBERT AND SUSAN GLEICH
NOREENE LINTON	PEGGY THOMPSON	

Exhibit B

Class Members Requesting Exclusion

ROBERT E WHITMORE	RYAN DIONNE	SHELLY MARTIN
ROBERT KELLY	SACHIKO HIRAI	SHIRLEY COOK
ROBERT NOTSON	SAHRON ELLESTAD	SHIRLEY KOZENIESLAY
ROBERT RUTZEL	SALLY LEPPALA	SIMEON D MISHEV
ROBERT WICK	SAM EDWARDS	SIMONE LEE
ROBERT WILLIAMS	SAMUEL SPENCER	SKIP IREDALE
ROBERTA RICHARDS	SANDRA SCHOTT	STACI CULOTTA
ROBIN GOHLKE	SARA MAY	STANLEY G WILLIAMS
ROBIN IRWIN	SARAH REILLY	STEFANIE SHATRICH
ROBIN LEWIS	SARAH SCHUETZ	STEPHANIE NGUYEN
ROD RIGOS and BARBARA GLADHART RIGOS	SCOTT AND MADELINE WETMORE	STEPHANIE PEARSON STEPHANIE WILLIAMS
ROGER WIER	SCOTT HIIGEL	STEPHANIE WOOD
ROLAND SCHREIBER	SCOTT MCCARTHY	STEPHEN BEELER
ROMAN BRUSOVANKIN	SCOTT MEYER	STEPHEN G RIDDLE
RON and SHERRY LAWLOR	SCOTT MILLER	STEPHEN NOJEK
RONALD F HOMEIER	SEAN KAZI	STEVE FLETCHER
RONALD WELLMAN	SHAHNAN GROSS	STEVE OVERLIN
ROSE and MELVYN REMOLADOR	SHANNON WYMAN SHARON and BEVERLY MINNICH	STEVE OWENS STEVEN C SANDSTROM
ROSEMARIE SHEPERD	SHARON BERDINE	STEVEN CHIN
ROSEMARY PALMER	SHARON HOLLOW	SUE SEITHAMER
ROY OSTEEN	SHARON NELSON	SUSAN A FRANTZICK
RUSTY MAYBORNE	SHAWN L BRADLEY	SUSAN HATCLIFF
RUTH SILEN	SHELDON BOATRIGHT JR	SUSAN HUTCHINSON

Exhibit B

Class Members Requesting Exclusion

SUSAN SANDERS	TINA FAIRBANKS	WINFRED ALDINGER
SUSAN SQUIRES	TINA PANIZZOLI	WOODY WURSTER
SUZANNE DIAZ	TJ PIERCE	YEHUDA SKVERSKY
SUZANNE MCLAUGHLIN	TODD CAULEY	YOLANDA REINHARD
SYLVIA J MACUMBER	TODD GAERKE	ZELMA MEREDITH
SZYMON KOZACZKA	TOM MCCORMICK	ZOEY PHOENIX
TAMMI WRIGHT	TRAVIS CROUCH	
TAMMIE EGER	TYLER DIXON	
TAMMY IVERSON	URSULA SNOVER	
TAMRA MCKEE	V L CLARK	
TANYA SATTLER	VICTORIA BELLE-MILLER	
TARA WISE	VIRGINIA LAWRENCE	
TAYA BALDWIN	VIRGINIA VROEGOP	
TED ASSATLY	WACO MACHETT	
TERESA ATCHISON	WALTER FLAVE HART III	
TERRI ROBERTSON	WAYNE DAY	
THEODORE LEACH	WENDY ZAMPARDI	
THOMAS AND CAROL DEMERY	WESLEY KNOUSE	
THOMAS and KATHRYN GROSSI	WILLIAM B CONTOIS	
THOMAS BECKER	WILLIAM BAILEY	
THOMAS CZERWINSKI	WILLIAM FRAZIER	
THOMAS DEVAUGHN	WILLIAM HIGHTOWER	
TIFFANY MACKENZIE	WILLIAM JELLISON	
TIMOTHY M JONES	WILLIAM PENNER	
	WILLIAM W REYNOLDS	

Exhibit B

CERTIFICATE OF SERVICE

I, Leslie R. Cuesta, hereby declare as follows:

I am employed by Berman DeValerio, One California Street, Suite 900, San Francisco, California, 94111. I am over the age of 18 years and am not a party to this action. On March 28, 2012, using the Central District of California's Electronic Case Filing System ("ECF"), with the ECF ID registered to Christopher T. Heffelfinger, and at his direction, I filed and served true and correct copies of the document(s) described as follows:

**[PROPOSED] ORDER AND FINAL JUDGMENT APPROVING SETTLEMENT BETWEEN
SETTLEMENT CLASS PLAINTIFFS AND WAL-MART STORES, INC. AND
WALMART.COM USA LLC**

The ECF System is designed to automatically generate an e-mail message to all parties in the case, which constitutes service.

I further declare that on March 28, 2012, I served true and correct copies of the document(s) listed above on the following attorneys and/or parties, who are not on the list to receive e-mail notices for this case, by transmitting a true and correct Portable Document Format (PDF) copy via email the document(s) listed above on this date before 5:00 p.m. PDT to the person(s) at the email address(es) set forth below:

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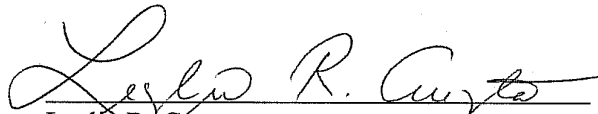
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12 I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is
13 true and correct.

14 Executed at San Francisco, California, on March 28, 2012.

15
16 
17 Leslie R. Cuesta

1
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3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 **IN RE ONLINE DVD RENTAL**
12 **ANTITRUST LITIGATION**

13 **Master File No. 4:09-md-2029 PJH**

14 **MDL No. 2029**

15 **Hon. Phyllis J. Hamilton**

16 **This document relates to all actions**
17 **except:**

18 *Pierson v. Walmart.com USA LLC et al.,*
19 *M:09-CV-2163-PJH*
20 *Levy, et al. v. Walmart.com USA LLC, et*
21 *al., M:09-CV-2296-PJH*

22 **~~[PROPOSED]~~ ORDER AWARDING CLASS**
23 **COUNSEL ATTORNEYS' FEES,**
24 **REIMBURSEMENT OF EXPENSES, AND**
25 **PAYMENTS TO CLASS REPRESENTATIVES**

26
27
28

[4:09-md-2029 PJH] [PROPOSED] ORDER AWARDING CLASS COUNSEL ATTORNEYS' FEES,
REIMB. OF EXPENSES, AND CLASS REP PAYMENTS

1 The Court, having considered the Plaintiffs' Motion for Award of Attorneys' Fees,
2 Reimbursement of Expenses, and Payments to Class Representatives, and the memorandum and
3 declarations in support thereof, and after hearing, hereby finds that:

4 1. The Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and
5 Payments to Class Representatives, requests an award of attorneys' fees in the amount of
6 \$6,812,500 (25% of the recovery from Wal-Mart), which is comprised of the Settling
7 Defendants' settlement payment together with a proportional share of interest earned thereon.
8 Further, Plaintiff's counsel ("Class Counsel") request partial reimbursement of out-of-pocket
9 litigation costs and expenses in the amount of \$1,700,000. Lastly, Plaintiffs request incentive
10 awards for the nine (9) class representatives in the amount of \$5,000 each, or \$45,000 total.

11 2. The Court finds that the amount of fees requested is fair and reasonable under the
12 "percentage-of-recovery" method.

13 3. The attorneys' fees requested were entirely contingent upon success. Class
14 Counsel risked time and effort and advanced costs and expenses that greatly exceed the request,
15 with no ultimate guarantee of compensation.

16 5. Upon consideration of the Motion and accompanying Declarations and based
17 upon all matters of record including the pleadings and papers filed in this action, the Court
18 hereby finds that the fee requested is reasonable and proper, that the costs and expenses incurred
19 by Class Counsel were necessary, reasonable and proper, and that incentive awards are
20 appropriate given the time and effort expended by the class representatives in the prosecution of
21 this case.

22 Accordingly, it is hereby ORDERED and DECREED that:

23 A. Class Counsel are awarded attorneys' fees of \$6,812,500 (approximately 25
24 percent of the recovery from Wal-Mart), together with a proportional share of interest earned on
25 the Settlement Fund for the same time period and at the same rate as that earned on the
26 Settlement Fund until dispersed to Class Counsel.

1 B. Class Counsel are awarded partial reimbursement of their litigation costs and
2 expenses in the amount of \$1,700,000.

3 C. The class representatives – Bryan Eastman, Amy Latham, Melanie Salvi, Stan
4 Magee, Michael Orozco, Andrea Resnick, Liza Sivek, Michael Weiner, and Scott Caldwell –
5 shall each receive an incentive award in the amount of \$5,000 (\$45,000 in total).

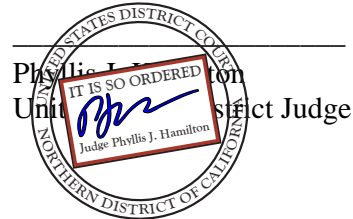
6 D. The attorneys' fees awarded, reimbursement of litigation costs and expenses, and
7 incentive awards shall be paid from the Settlement Fund and the interest earned thereon.

8 E. The fees and expenses shall be allocated among Class Counsel by Lead Counsel
9 in a manner which, in Lead Counsels' good-faith judgment, reflects each firm's contribution to
10 the institution, prosecution and resolution of the litigation.

11 F. This order shall be entered as of this date pursuant to Rule 54(b) of the Federal
12 Rules of Civil Procedure, the Court finding that there is no just reason for delay.

13 IT IS SO ORDERED

14 Dated: March 29, 2012



ONE THAT I RAISED MYSELF TO THE PROVISION OF THE SETTLEMENT AGREEMENT WE'VE TALKED ABOUT -- I DIDN'T FIND ONE OBJECTION WAS SUFFICIENT OR -- SINGULAR OR IN THE AGGREGATE -- TO PRECLUDE ME FROM APPROVING THIS SETTLEMENT.

I'M NOT GOING TO GO THROUGH AND ADDRESS EACH ONE. I WILL SAY FOR THE RECORD THAT THE PLAINTIFFS' REPLY BRIEF I THINK DID AN ADEQUATE JOB OF REFUTING MOST OF THE OBJECTIONS, PARTICULARLY THOSE THAT WEREN'T EXACTLY ACCURATE REFLECTIONS OF WHAT THE INTENT OF THE SETTLEMENT WAS.

IT'S A COMPLICATED SETTLEMENT, AND I DO UNDERSTAND THAT IT CERTAINLY COULD GIVE RISE TO SOME CONFUSION. BUT WITH REGARD TO THE BIG -- THE BIG OBJECTIONS, THE BIG OBJECTIONS BEING TO THE -- THE GIFT -- GIFT CARDS AS COUPONS, I'M CERTAINLY PERSUADED THAT THERE ARE SOME SHARED CHARACTERISTICS BETWEEN A GIFT CARD AND A COUPON, BUT A GIFT CARD IS NOT A COUPON. AND UNLESS SOME APPELLATE COURT TELLS ME OTHERWISE, I WILL PROCEED TO TREAT GIFT CARDS DIFFERENTLY, PARTICULARLY WHEN THEY HAVE THE ATTRIBUTES OF THIS PARTICULAR GIFT CARD.

AND THIS PARTICULAR GIFT CARD IS, I THINK, SUFFICIENT -- SUFFICIENTLY DISTINGUISHED FROM THE COUPON IN THAT IT HAS NO EXPIRATION DATE, EITHER FOR CALIFORNIANS OR NON-CALIFORNIANS. GIVEN THAT THAT'S WHAT THE PARTIES HAVE SETTLED UPON, THAT IT'S TRANSFERABLE FROM ONE PARTY TO ANOTHER, AND MOST IMPORTANTLY THAT THE PARTIES WERE GIVEN THE OPTION.

NOW, WE DON'T KNOW WHAT WOULD HAVE HAPPENED HAD

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (510) 451-7530

EVERYONE CHOSEN CASH. THERE IS THAT PROVISION OF THE SETTLEMENT WHICH I TEND TO AGREE WITH THE OBJECTORS WAS OBJECTIONABLE AND THAT HAD THERE BEEN TOO MANY CASH REQUESTS THAT YOU ALL WANTED TO GO BACK TO THE DRAWING BOARD. I WOULD NEVER HAVE APPROVED THAT PROCEDURE HAD I BEEN FACED WITH THAT TODAY.

BUT GIVEN THAT WE KNOW WHAT THE RESPONSE IS TO THE SETTLEMENT AND THAT THE VAST MAJORITY BY TWO-TO-ONE HAVE ELECTED THE GIFT CARDS INSTEAD OF THE CASH COMPONENT, THAT OBJECTION OR PORTION DOESN'T EVEN COME INTO PLAY.

SO BECAUSE OF THE DISTINGUISHING FEATURES AND PRIMARILY THE ABILITY OF THE CLASS MEMBERS TO CHOOSE WHETHER OR NOT THEY WANTED CASH OR A GIFT CARD, I THINK MAKES THIS SETTLEMENT CLOSER TO A CASH SETTLEMENT THAN IT IS TO A COUPON SETTLEMENT. AND SO, THEREFORE, I OVERRULE THOSE OBJECTIONS.

WITH REGARD TO THE OBJECTIONS TO THE SO-CALLED REVERSIONARY PROVISION, I THINK PLAINTIFFS' COUNSEL ADEQUATELY EXPLAINED THE INCORRECTNESS OF THAT ASSUMPTION. THERE'S NOTHING THAT REVERTS BACK TO WAL-MART EXCEPT IF I DON'T GRANT APPROVAL OF THE SETTLEMENT.

AS I UNDERSTAND IT, WAL-MART HAS ADVANCED THE ADMINISTRATION COSTS ESSENTIALLY. AND IF, INDEED, I WERE TO DENY THE SETTLEMENT AND IF THERE WERE ANY FUNDS THAT HADN'T BEEN UTILIZED THAT WERE IN THAT POOL OF FUNDS ADVANCED, THAT WOULD REVERT BACK. SO THOSE OBJECTIONS ARE OVERRULED.

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THERE WERE OBJECTIONS TO THE -- THE SO-CALLED ESCAPE CLAUSE I'VE ALREADY REFERRED TO, AND IT'S MOOTED BY THE ACTUAL RESPONSE TO THE CLASS.

THERE WERE A NUMBER OF OBJECTIONS AS TO THE FACT THAT THE REQUEST FOR CASH HAD TO BE MAILED AS OPPOSED TO EMAILED AS THE REQUEST FOR GIFT CARD WERE, AND AT -- WHEN I FIRST READ THOSE, I THOUGHT, WELL, YOU KNOW, THAT REALLY DOES SEEM LIKE IT COULD SERVE AS A DETERRENT, BUT I MEAN, I THINK, AS MR. TABACCO INDICATED, MOST OF THE SETTLEMENTS UP UNTIL RECENTLY -- I THINK I APPROVED MY FIRST EMAIL NOTICE AND CLAIMS PROCEDURE WITHIN THE LAST YEAR OR TWO AT THE MOST.

I MEAN, IT USED TO BE EVERYTHING WAS DONE BY MAIL, ALL CLAIMS WERE DONE BY MAIL. SO IN THIS CASE, IF WE LOOK AT IT THAT WAY, THEN THE SETTLEMENT AND THE NOTICES IS BETTER THAN A LOT THAT ARE GOING ON IN PERHAPS OTHER JURISDICTIONS WHERE EVERYONE'S NOT UTILIZING EMAIL TO THE EXTENT THAT WAS DONE HERE. SO I DON'T FIND THAT THOSE OBJECTIONS ARE MERITORIOUS.

THERE WERE OBJECTIONS TO THE PER CAPITA -- I WOULD CALL IT PRO RATA PAYMENTS TO THE INDIVIDUAL MEMBERS AS OPPOSED TO A MORE COMPLICATED PAYMENT SCHEME THAT WOULD TAKE INTO ACCOUNT THE VARIOUS DIFFERENT PLANS AND OPTIONS AND -- I MEAN, WE ALL RECOGNIZE THAT EVERYONE HAS PAID DIFFERENT AMOUNTS. AND TO THE EXTENT THAT THERE ARE -- IS MERIT TO THE CLAIM, THEIR LOSSES ARE DIFFERENT.

NONETHELESS, GIVEN THE SIZE OF THE -- OF THE OVERALL

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SETTLEMENT AWARD, I THINK THAT THE BEST WAY TO MAKE SURE -- AND I REMEMBER AT THE TIME THAT I DENIED PRELIMINARY APPROVAL THE FIRST TIME AROUND, ONE OF THE THINGS I RAISED WAS, WELL, SHOULDN'T -- SHOULDN'T CLASS MEMBERS BE ABLE TO EXPECT AT LEAST REIMBURSEMENT FOR ONE MONTH'S RENTAL FEE? THIS WAS BACK WHEN WE WERE ANTICIPATING THAT WE COULD HAVE 35 MILLION RESPONSES AND EVERYBODY WOULD RECEIVE 50 CENTS OR SOMETHING.

WELL, I THINK, AS IT'S BORNE OUT, \$12, WHILE NOT A LOT OF MONEY THESE DAYS EVEN AT WAL-MART, IS \$12. AND FOR CLASS MEMBERS TO RECEIVE THAT IN LIEU OF RECEIVING NOTHING IS OF SOME, I THINK, ACTUAL VALUE TO THE CLASS. AND I THINK IT WOULD BE PREFERABLE -- IT'S PREFERABLE TO THE COURT AND I THINK TO THE CLASS MEMBERS THAT EVERYBODY RECEIVE SOMETHING RATHER THAN SOME PEOPLE RECEIVE 30 DOLLARS AND OTHERS RECEIVE 1 DOLLAR. SO I OVERRULE THOSE OBJECTIONS AS WELL.

THERE WERE OBJECTIONS TO THE FAIRNESS OF EVEN USING THE GIFT CARD -- I FORGOT TO SAY THIS EARLIER -- BECAUSE IT DOES FORCE THIS RELATIONSHIP -- THIS ONGOING RELATIONSHIP WITH THE OFFENDING DEFENDANT. HOWEVER, GIVEN THE FACT THAT CLASS MEMBERS WERE GIVEN THE CHOICE, THAT'S NOT REALLY PROBLEMATIC. I -- 'CAUSE I THINK I RAISED THAT INITIALLY AS WELL. BUT I THINK THE WAY YOU ALL HAVE RESOLVED IT IS CERTAINLY SATISFACTORY TO THE COURT.

THE -- WITH REGARD TO THE NOTICE, THE FACT THAT A SECOND NOTICE WAS POSTED -- AND I THINK IT WAS EMAILED, JUST

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NOT REMAILED BY MAIL. AM I CORRECT ABOUT THAT? THE SECOND NOTICE FOLLOWING THE SUMMARY JUDGMENT GRANT, WAS THAT JUST POSTED ON THE WEBSITE?

MR. SPECTOR: YES, YOUR HONOR. IT WAS POSTED ON THE WEBSITE.

THE COURT: IT WAS POSTED ON THE WEBSITE. OKAY.

GIVEN THE COST OF MAILING AND MY CONCERN THAT EVERYBODY RECEIVE EQUAL ACCESS BECAUSE I DID REQUIRE THAT YOU SEND MAIL FOR ALL OF THE BOUNCEBACKS. SO FOR PEOPLE FOR WHOM YOU DIDN'T HAVE PROPER EMAIL ADDRESSES FOR -- I THINK THAT THAT'S PERFECTLY FINE TO POST IT ON THE WEBSITE. EVERYBODY THEREAFTER HAD EQUAL ACCESS AND TO REQUIRE -- BECAUSE IF YOU WERE GOING TO SEND THE NOTICE BY EMAIL, I WOULD HAVE REQUIRED THAT YOU MAIL AGAIN THE SECOND NOTICE. AND RATHER THAN DEplete THE FUND FURTHER, I THINK PROVIDING EQUAL ACCESS TO THE WEBSITE WAS AN ADEQUATE WAY OF DEALING WITH THE DEVELOPMENTS IN THE CASE.

THE IMPROPER ADDRESS -- GIVEN THAT THERE WERE ONLY A FEW OBJECTIONS TO THAT, I DON'T FIND THOSE TO BE SUFFICIENT, ALTHOUGH YOU COULD HAVE USED A DIFFERENT "FROM" LINE SO THAT PEOPLE WOULDN'T HAVE BEEN AS INCLINED TO SEND IT TO THE SPAM FILE. BUT I DON'T FIND THAT THAT IN AND OF ITSELF IS SUFFICIENT TO RENDER THE NOTICE NOT AN ADEQUATE NOTICE.

AND, CLEARLY, TO THE EXTENT THAT SOME OF THE OBJECTIONS INDICATED THAT THE AMOUNTS OF THE LIKELY AWARD WERE

NOT SPECIFIED, YOU COULDN'T VERY WELL DO THAT IN THIS KIND OF A CASE. YOU HAD TO FIND OUT HOW MANY CLAIMS THERE WERE -- THERE WERE GOING TO BE BEFORE YOU COULD DO THAT. SO THOSE OBJECTIONS ARE OVERRULED.

THERE WERE SOME -- THE OTHER -- THE REMAINING OBJECTIONS GO TO THE -- THAT FACT THAT INCENTIVE PAYMENTS FOR PLAINTIFFS -- NAMED PLAINTIFFS ARE BEING SOUGHT AS WELL AS THE FEES. WE'VE HAD DIFFERENT PROPOSALS AS TO WHAT THE INCENTIVE PAYMENTS AND FEES SHOULD BE. BUT I'LL JUST SAY WITH REGARD TO THE INCENTIVE PAYMENTS, GIVEN THE OVERALL SIZE OF THE SETTLEMENT, I'LL APPROVE \$5,000. I'VE CERTAINLY APPROVED \$5,000 FOR CLASS PLAINTIFFS WITH SMALLER OVERALL SETTLEMENT FUNDS.

I RARELY -- RARELY -- ON OCCASION BUT RARELY APPROVE GREATER THAN \$5,000, BUT GIVEN THE FACT THAT THERE WERE DEPOSITIONS THAT PLAINTIFFS HAVE PARTICIPATED IN AND THAT THE LITIGATION DID -- WAS COMPLICATED AND DID TAKE QUITE BIT OF TIME -- THEIR TIME INCLUDED, I WOULD APPROVE THE \$5,000 AWARDS AS WELL.

AND THEN LASTLY, WITH REGARD TO THE 25,000 -- THE 25 PERCENT OF THE TOTAL FUND AND -- THERE WERE SOME OBJECTIONS AS TO WHETHER OR NOT THAT SHOULD BE TAKEN OUT OF NET FUND OR THE GROSS FUND, ET CETERA, I'VE NOT HAD THE EXPERIENCE WHERE ADMINISTRATION COSTS HAVE NOT COME OUT OF THE FUND OR ARE PAID ELSEWHERE.

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ON A COUPLE OF OCCASIONS, PLAINTIFFS HAVE BEEN SUCCESSFUL IN NEGOTIATING WITH THE DEFENDANTS TO PAY ADMINISTRATION COSTS ON TOP OF THE SETTLEMENT AMOUNT, BUT THOSE ARE RARE CASES.

IN MOST CASES BEFORE ME, THE ADMINISTRATION COSTS COME OUT OF THE FUND BECAUSE I DO -- NOTWITHSTANDING THE OBJECTIONS TO THE CONTRARY, BUT I DO FIND THAT WITHOUT ADMINISTRATION, I -- I DON'T KNOW HOW WE WOULD ACCOMPLISH DISTRIBUTION IN A MEANINGFUL AND SIGNIFICANT WAY. AND THAT DOES INURE TO THE BENEFIT OF THE CLASS TO HAVE SOME MANNER OF HAVING THE FUND DISTRIBUTED IN AN ORGANIZED WAY.

I THINK I HAD ONE CASE ONCE WHERE THE DEFENDANT, WITH THE PLAINTIFFS' AGREEMENT, AGREED TO DO DISTRIBUTION, AND IT WAS A TOTAL MESS AND IT HAD TO ALL BE DONE ALL OVER AGAIN.

IT'S BETTER TO HAVE AN OBJECTIVE CLAIMS ADMINISTRATOR. THEY DON'T COME CHEAP. I UNDERSTAND THAT, BUT THAT'S IN THE CLASS'S INTEREST.

WITH REGARD TO WHETHER OR NOT THE BENCH MARK -- THE 25 PERCENT OR SOMETHING LESS OR SOMETHING GREATER OR WHETHER OR NOT A LODESTAR SHOULD BE UTILIZED, IT'S -- IT'S MY EXPERIENCE THAT I DO GENERALLY LIKE HAVING A LODESTAR AS A CROSS-CHECK, AND IN THIS CASE, YOU ALL HAVE PROVIDED SUMMARY INFORMATION AS OPPOSED TO THE ACTUAL TIME SHEETS AND BILLING RECORDS. AND I DON'T REQUIRE TIME SHEETS AND BILLING RECORDS WHEN COUNSEL ARE, FOR THE MOST PART, ASKING FOR A BENCH MARK.

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IF I WERE TO DENY A BENCH MARK AND THEN NEEDED TO DETERMINE WHAT THE LODESTAR WAS, THEN I WOULD ASK FOR THE MORE DETAILED TIME RECORDS SO THAT I COULD MAKE THAT DETERMINATION. IN THIS CASE, GIVEN THAT COUNSEL'S REQUESTING THE 25 PERCENT BENCH MARK, THE LODESTAR SUMMARY, AS IT IS, IS JUST USED AS A CROSS-CHECK. AND THESE LAWYERS HAVE PRACTICED BEFORE ME FOR MANY YEARS, AND I HAVE NO BASIS FOR NOT ACCEPTING THEIR REPRESENTATIONS WITH REGARD TO THE OVERALL HOURS.

I RECOGNIZE THAT IF I WERE ASKED TO DO -- TO SCRUTINIZE YOUR RECORDS MORE CLEARLY, I'D PROBABLY CUT SOME THINGS. I ALWAYS DO. BUT I RARELY EVER CUT ANYBODY'S FEES IN HALF. I MEAN, AND THEY HAVE INDICATED IN THEIR RECORDS AND IN THEIR DECLARATIONS THAT THEIR LODESTAR'S MORE THAN THREE TIMES AS MUCH AS THE AMOUNT OF -- OR AT LEAST THREE TIMES AS MUCH AS THE AMOUNT OF THE 25 PERCENT BENCH MARK. SO IN THIS CASE, THE CLASS IS IN A MUCH BETTER POSITION HAVING -- THAN HAVING A LODESTAR.

I MEAN, I WOULDN'T, OBVIOUSLY, APPROVE A \$20 MILLION LODESTAR IN A \$27 MILLION SETTLEMENT, BUT I DON'T SEE ANY BASIS FOR NOT GRANTING THE OVERALL 25 PERCENT, PARTICULARLY HAVING FOUND THAT THE GIFT CARD DOES NOT VIOLATE THE CLASS ACTION FAIRNESS ACT.

SO I WILL -- AT THIS TIME, I'M PREPARED TO FIND THAT THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE GIVEN THE TOTALITY OF THE CIRCUMSTANCES, PARTICULARLY GIVEN THE FACT THAT

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HALF THE CASE HAS BEEN KIND OF WIPE OFF THE BOOKS FOR THE PLAINTIFFS, I FIND THAT THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, THAT SOMETHING'S BETTER THAN NOTHING IN THIS KIND OF CASE, AND THAT THE BENCH MARK IS A REASONABLE FEE FOR THE CASE. SO I APPROVE.

THE SETTLEMENT'S APPROVED WITH THE EXCEPTION OF THAT ONE PROVISION, THE 877.5. NOW, I DON'T KNOW -- GIVEN THAT I'VE APPROVED EVERYTHING ELSE, I DON'T KNOW IF WE HAVE -- IF I CAN SIGN OFF ON ANYTHING TODAY. SO YOU ALL NEED TO GO BACK TO THE DRAWING BOARD AND FIGURE OUT WHAT THAT ONE PROVISION MEANS IN TERMS OF WHETHER OR NOT THERE IS A -- A SETTLEMENT THAT CAN BE ENTERED.

OKAY? ALL RIGHT. IS THERE ANY QUESTION?

MR. DiNARDO: NOT FROM THE DEFENDANT.

MR. TABACCO: NOT FROM --

THE COURT: ALL RIGHT. SO PLEASE TRY TO RESOLVE IT WITHIN THE NEXT WEEK. I WOULD LIKE -- IF THIS CASE IS GOING TO BE SETTLED, I WANT IT SETTLED BEFORE MARCH -- I WANT IT OFF MY DOCKET BY MARCH 31ST. ALL RIGHT?

SO WORK IT OUT, AND THEN YOU CAN CONTACT NICHOLE. IF YOU WANT A TELEPHONE CONFERENCE, WE CAN DO THAT, OR IF YOU WANT TO JUST SUBMIT AN APPLICATION, WE'LL DO IT ON SHORTENED TIME.

MR. TABACCO: THANK YOU, YOUR HONOR.

MR. DiNARDO: THANK YOU, YOUR HONOR.

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